



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of double her deposits pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that on August 1, 2012, the tenant placed her written notice to end this tenancy by either September 1 or September 15, 2012 in the landlord's mailbox. The landlord provided oral and written evidence that she received the tenant's notice to end this tenancy on August 1, 2012.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 20, 2012. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package posted on her door by the tenant on November 30, 2012. I am satisfied that both parties were served with one another's hearing packages and were prepared to discuss these applications at this hearing. Both parties also confirmed that they were served with one another's written evidence packages, including two sets of photographs submitted by the landlord, in sufficient time to enable them to adequately prepare for this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties are entitled to the tenant's deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fees for their applications from one another?

Background and Evidence

This fixed term tenancy between the landlord, the tenant and the tenant's male friend who left the rental unit part-way through this tenancy commenced on September 1, 2011. The Residential Tenancy Agreement (the Agreement) entered into written evidence by both parties stated that this was a 12-month tenancy agreement, but noted that the end date of the tenancy was set at September 30, 2012. The tenant claimed that the Agreement called for an end to her fixed term tenancy 12 months after it commenced, on August 31, 2012. The landlord testified that the end date for the fixed term was clearly identified as September 30, 2012, even though this made this a 13-month fixed term tenancy. The Agreement also stated that the tenancy may continue on a month-to-month basis or for another fixed term at the end of the initial fixed term.

Monthly rent was set at \$1,300.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenant's \$650.00 security deposit paid on July 31, 2011 and \$100.00 pet damage deposit paid on September 1, 2011.

The tenant's application for a monetary award of \$1,400.00 sought a return of double her deposits due to the landlord's failure to comply with the provisions of section 38 of the *Act* by either returning her deposits in full within 15 days of the end of her tenancy or applying for dispute resolution within that time period.

The landlord's application for a monetary award of \$2,050.00 included the following items outlined at pages 3 and 4 of her written evidence:

Item	Amount
Loss of Rent for September 2012	\$1,300.00
Rodent Control due to Tenant's Negligence	184.80
Outstanding Hydro Bill	23.50
Cleaning	80.00
Repairs/Clean-up of Premises/ Junk Removal	457.00

Recovery of Filing Fee	50.00
Total of Above Items	\$2,095.30

The landlord entered into written evidence copies of bills and receipts she incurred to restore the rental unit to the condition whereby the premises could be re-rented to new tenants. Although the tenant testified that the rental unit was not totally clean when she moved in and had some furniture left behind from previous tenants, the tenant did not dispute the accuracy of the landlord's photographic evidence taken at the end of this tenancy.

The parties agreed that a Joint Move-In Condition inspection occurred on August 31, 2011. The landlord conducted her own Move-Out Condition inspection on September 15, 2012. Both parties entered into written evidence copies of the Reports the landlord produced for both of these inspections.

The landlord entered oral and written evidence that she tried to schedule a Joint Move-Out Condition inspection with the tenant before the tenant vacated the rental unit, but the tenant did not comply with this request. She testified that she made one written request for a Joint Move-Out Condition Inspection for September 1, 2012. She said that the tenant did not return the keys directly to her at the end of this tenancy. Based on the tenant's written notice to end this tenancy, the landlord said that she was uncertain as to whether the tenant had vacated the rental unit by September 1, 2012 or was planning to vacate the rental unit by September 15, 2012, the other date identified on the tenant's written notice to end this tenancy. The landlord testified that she first accessed the rental unit through the other suite in this rental house on September 9, 2012. Although the tenant had left one pair of keys for the landlord in the rental unit, the tenant also left possessions and material behind at the end of this tenancy. This added further question as to the whether the tenant had in fact abandoned the rental unit or planned to return to remove these items and conduct cleaning at the end of this tenancy.

The tenant provided oral and written evidence that the landlord was aware that she planned to vacate the rental unit before September 1, 2012. The tenant testified that she ended her tenancy and removed everything that was hers by August 30, 2012. She confirmed that she did not give her key directly to the landlord, but left it for her within the rental unit. The tenant testified that she did not leave furniture or belongings behind that were hers.

Analysis – Return of Pet Damage and Security Deposits

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address to the landlord in writing. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the parties agreed that the tenant sent the landlord her forwarding address in writing by registered mail on August 15, 2012. The landlord testified that she received the tenant's forwarding address in writing by registered mail on August 21, 2012. Both parties agreed that this tenancy ended after August 21, 2012. Therefore, I find that the triggering event for the return of the tenant's security deposit was the end date for the tenancy.

The tenant maintained that her tenancy ended on August 30, 2012, when she vacated the rental unit. However, her written notice to end tenancy identified two separate dates when she was proposing ending this tenancy (i.e., September 1, 2012 and September 15, 2012). As she did not physically return the keys to the landlord and did not participate in a joint move-out condition inspection, I find that the landlord did not act unreasonably by failing to enter the rental premises until September 9, 2012. Under these circumstances, I find that this tenancy ended on September 9, 2012, when the landlord entered the rental unit and discovered the tenant's key and realized that the tenant was no longer living in the rental unit. However, I find that even on that date the landlord may have been uncertain as to whether this tenancy was continuing until September 15, 2012, one of the dates identified in the tenant's written notice to end tenancy. For example, the tenant had not returned the second key that the landlord claims to have provided to the two tenants named on the Agreement. There is also undisputed photographic evidence that the tenant failed to remove everything from the rental unit, including items in the refrigerator. I find that the triggering date for the 15-day time period established under section 38 of the *Act* was September 9, 2012.

The landlord applied for dispute resolution for authorization to retain the tenant's deposits on September 18, 2012. I find that the landlord did apply for dispute resolution to retain the tenant's deposits within the 15-day time period established under section 38 of the *Act*. As such, I dismiss the tenant's application for a monetary award for the landlord's alleged contravention of section 38 of the *Act* without leave to reapply. I also dismiss her application to recover her filing fee from the landlord.

Analysis – Landlord's Application to Recover Loss of Rent for September 2012 and Unpaid Utilities

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of the fixed term tenancy Agreement because she vacated the rental premises prior to the September 30, 2012 date specified in that Agreement. Even if I am wrong on my determination that the specific date identified to end the Agreement is the end date for this tenancy, I note the tenant did not provide her written notice to end this tenancy until August 1, 2012. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for September 2012, the tenant would have needed to provide her notice to end this tenancy before August 1, 2012, even if this were a periodic tenancy. As the wording of the Agreement specifically allowed the tenancy to continue as a periodic tenancy after the initial fixed term had ended, the tenant did not comply with the provisions of the Agreement if it were a periodic or a fixed term tenancy.

There is undisputed evidence that the tenant did not pay any rent for September 2012. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2012. She provided oral and extensive written evidence to demonstrate that she commenced her efforts to find a new tenant for this rental unit shortly after the tenant gave her written notice to end this tenancy. She entered into written evidence records of a number of enquiries on a popular rental website from prospective renters who were interested in viewing the rental premises. The identification of two separate end dates for the tenant's proposed

end to this tenancy left the landlord with a level of uncertainty as to when new renters could take possession. The landlord was successful in locating new tenants who took possession on October 1, 2012 for the same monthly rent as was being received from the tenant, after the landlord cleaned and repaired the rental unit. I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's loss. I issue a monetary award in the landlord's favour in the amount of \$1,300.00 for loss of rent for September 2012.

Based on the undisputed evidence submitted by the landlord, I also allow the landlord's application for a monetary award of \$23.50 for an unpaid hydro bill that arose out of this tenancy.

Analysis – Remainder of Landlord's Application

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Although the tenant maintained that some of the items in the landlord's claim were left in the same condition as when she moved into the rental unit September 2011, she did not dispute the landlord's claim that the photographic evidence accurately reflected the condition of the premises at the end of this tenancy.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of August 31, 2011 entered into written evidence showed that with some exceptions most parts of the rental unit were in good condition at that time. Repairs were noted as required to the sliding doors which had to be painted, the bathroom needed to be cleaned, as did the oven and windows in the basement.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. Although I find that the landlord did not provide the required two written opportunities for a final inspection of the rental premises, the

evidence before me reveals that the tenant did not leave the rental unit in reasonably clean and undamaged condition as required by section 37(2) of the *Act*. Some cleaning was likely required by the landlord after the tenant vacated the rental unit to restore the rental unit to the pre-tenancy condition. For that reason, I find that the landlord is entitled to a monetary award of \$80.00 for general cleaning that was required at the end of this tenancy.

I also accept that the landlord incurred costs to remove debris and furniture that was acquired during the course of this tenancy, even if some of this material was brought to the premises by the co-tenant who ended this tenancy during the summer of 2012. The undisputed photographs reveal considerable damage to the premises and considerable material that needed to be removed from the premises in order to secure another tenant. I allow a monetary award of \$342.75, an amount that represents $\frac{3}{4}$ of the landlord's demonstrated expense for this item.

I have also reviewed oral, photographic and written evidence from the parties with respect to the landlord's claim for a monetary award of \$184.80, the expense she incurred to eradicate a rodent problem in this rental property. Assigning definitive responsibility to a tenant in a multi-tenant property for a rodent infestation is difficult to determine. However, based on a balance of probabilities, I find it more likely than not that the tenant's actions were primarily responsible for the landlord's expenses in this regard. For this reason, I allow the landlord to recover 60% of her \$184.80 expense for rodent control from the tenant.

I allow the landlord to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover her filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage and

Item	Amount
Loss of Rent for September 2012	\$1,300.00
Landlord's Losses - Rodent Control (\$184.80 x 60% = \$110.88)	110.88
Outstanding Hydro Bill	23.50
Cleaning	80.00

Repairs/Clean-up of Premises/ Junk Removal ($\$457.00 \times \frac{3}{4} = \342.75)	342.75
Less Pet Damage & Security Deposits	-750.00
Recovery of Filing Fee	50.00
Total of Monetary Order	\$1,157.13

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2012

Residential Tenancy Branch